

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CRIMINAL CASE NO. 1:08-cr-00082-MR-2  
CRIMINAL CASE NO. 1:09-cr-00055-MR-1  
CRIMINAL CASE NO. 1:09-cr-00058-MR-1

UNITED STATES OF AMERICA, )  
Plaintiff, )  
vs. )                           ORDER  
LARRY MICHAEL COPELAND, )  
Defendant. )

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THIS MATTER comes before the Court on the Defendant's letter, which the Court construes as a motion challenging the calculation of his sentence in light of United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). [Criminal Case No. 1:08-cr-00082-MR-2 ("CR"), Doc. 163; Criminal Case No. 1:09-cr-00055-MR-1, Doc. 39; Criminal Case No. 1:09-cr-00058-MR-1, Doc. 53].

In 2009, the Defendant pleaded guilty in a consolidated proceeding of criminal actions 1:08-cr-00082 (W.D.N.C.), 1:09-cr-00055 (M.D.N.C.), and 1:09-cr-00058 (D.S.C.) to the following offenses: (1) bank robbery and aiding and abetting the same, in violation of 18 U.S.C. §§ 2113(a) and 2 (Count One in 1:08-cr-00082); (2) possession of a firearm in relation to a crime of

violence, in violation of 18 U.S.C. § 924(c)(1)(A)(ii) (Count Three in 1:08-cr-00082); (3) bank robbery and aiding and abetting such, in violation of 18 U.S.C. §§ 2113(a) and 2 (Count One in 1:09-cr-00055); and (4) bank robbery, in violation of 18 U.S.C. § 2113(a) (Count One in 1:09-cr-00058). [CR Doc. 99: Judgment]. On July 8, 2010, this Court sentenced the Defendant to a term of 136 months on Count One in each of Nos. 1:08-cr-00082, 1:09-cr-00055 and 1:09-cr-00058, to be served concurrently; and to a term of 84 months on Count Three of Docket No. 1:08-cr-00082, to be served consecutively to the term imposed in Count One of Nos. 1:08-cr-00082, 1:09-cr-00055 and 1:09-cr-00058, for a total term of 220 months. [Id.]. The Defendant did not appeal the Court's judgment.

The Defendant filed a motion to vacate pursuant to 28 U.S.C. § 2255 on June 21, 2016, arguing that he is entitled to relief under Johnson v. United States, 135 S. Ct. 2551 (2015). [CR Doc. 142]. The Court denied the Defendant's motion to vacate on October 7, 2016. [CR Doc. 147]. The Fourth Circuit Court of Appeals dismissed his appeal for failure to prosecute on January 17, 2017. [CR Doc. 155].

The Defendant now returns to this Court, challenging the calculation of his sentence in light of United States v. Simmons, 649 F.3d 237 (4th Cir. 2011) (en banc). [CR Doc. 163].

The Defendant is attacking the same criminal judgment that he challenged in his prior § 2255 motion. See United States v. Winestock, 340 F.3d 200, 207 (4<sup>th</sup> Cir. 2003) (noting that “new legal arguments or proffers of additional evidence will usually signify that the prisoner is . . . continuing his collateral attack on his conviction or sentence”). The Antiterrorism and Effective Death Penalty Act (AEDPA) provides, in relevant part, that “[a] second or successive motion [under Section 2255] must be certified as provided in Section 2244 by a panel of the appropriate court of appeals to contain —

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h). As noted, the Defendant previously filed a motion to vacate pursuant to 28 U.S.C. § 2255, which was denied. The Defendant has provided no evidence that he has secured the necessary authorization from the Fourth Circuit to proceed with a successive § 2255 motion. This Court is therefore without jurisdiction to consider a successive petition under § 2255.

See In re Vial, 115 F.3d 1192, 1194-95 (4<sup>th</sup> Cir. 1997) (en banc).

For the foregoing reasons, the Defendant's motion is denied. Further, pursuant to Rule 11(a) of the Rules Governing Section 2255 Cases, the Court declines to issue a certificate of appealability as the Defendant has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 473, 484 (2000) (holding that when relief is denied on procedural grounds, a petitioner must establish both that the correctness of the dispositive procedural ruling is debatable, and that the petition states a debatably valid claim of the denial of a constitutional right).

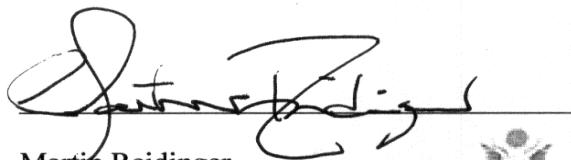
**ORDER**

**IT IS, THEREFORE, ORDERED** that the Defendant's letter, which the Court construes as a motion challenging the calculation of his sentence [Criminal Case No. 1:08-cr-00082-MR-2 ("CR"), Doc. 163; Criminal Case No. 1:09-cr-00055-MR-1, Doc. 39; Criminal Case No. 1:09-cr-00058-MR-1, Doc. 53] is **DENIED**.

**IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing Section 2255 Cases, the Court declines to issue a certificate of appealability.

**IT IS SO ORDERED.**

Signed: November 3, 2017



Martin Reidinger  
United States District Judge

